

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2031.

645

THE DISTRICT OF COLUMBIA, APPELLANT.

vs.

JENNIE T. MARTIN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 28, 1909.

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In the Court of Appeals of the District of Columbia.

No. 2031.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
JENNIE T. MARTIN.

a Supreme Court of the District of Columbia.

At Law. No. 51659.

JENNIE T. MARTIN, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed May 20, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51659.

JENNIE T. MARTIN, Plaintiff,
vs.
DISTRICT OF COLUMBIA, Defendant.

The plaintiff sues the defendant for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at its request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at its request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them. And

the plaintiff claim- of and from the defendant the sum of Six hundred and forty dollars, with interest from the 1st day of May, 1909, accordingly to the particulars of demand hereto annexed.

A. S. WORTHINGTON,
Attorney for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays occurring after the day of the service hereof; otherwise judgment.

A. S. WORTHINGTON,
Attorney for Plaintiff.

Bill of Particulars.

District of Columbia to Jennie T. Martin, Dr.

To services as teacher in Grade A, Class 6, from September 1st, 1908, to April 30th, 1909, eight months. . . . \$1,440.00

Cr.

By amount received. 800.00

Balance due. \$640.00

with interest from the 1st day of May, 1909.

Summons.

Issued May 20, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51659.

JENNIE T. MARTIN, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant.

The President of the United States to the Defendant, Greeting:

You are hereby Summoned to appear in this Court on or before the twentieth day, exclusive of Sundays and legal holidays, after the day of service of this Writ upon you, to answer the Plaintiff's Suit, and show why she should not have judgment against you for the cause of action stated in her declaration; and in case of your failure so to appear and answer, judgment will be given against you by default.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, the 20th day of May, A. D. 1909.

[SEAL.]

J. R. YOUNG, *Clerk,*
By H. BINGHAM,
Assistant Clerk.

A. S. WORTHINGTON, *Attorney.*

4

Marshal's Return.

Served copies of the declaration, notice to plead, affidavit, and this summons, on the Defendant, by service on H. B. F. Macfarland president of Board of Commissioners of defendant the 21st day of May, 1909.

AULICK PALMER, *Marshal*,
S.

5

Plea.

Filed May 28, 1909.

In the Supreme Court of the District of Columbia.

At Law. 51659.

JENNIE T. MARTIN

vs.

DISTRICT OF COLUMBIA.

Now comes the defendant, by its attorney, and for plea to the declaration says it never promised in manner and form as alleged.

E. H. THOMAS,
F. H. S.,
Att'y for Defendant.

6

Joinder in Issue.

Filed May 28, 1909.

In the Supreme Court of the District of Columbia.

No. 51659.

JENNIE T. MARTIN

vs.

DISTRICT OF COLUMBIA.

The plaintiff joins issue on the defendant's plea.

A. S. WORTHINGTON,
Attorney for Plaintiff.

Agreed Statement of Facts.

Filed May 28, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51659.

JENNIE T. MARTIN

v.

DISTRICT OF COLUMBIA.

Agreed Statement of Facts.

It is hereby stipulated and agreed:

1. That the plaintiff Jennie T. Martin, was duly appointed as a probationary teacher in Group A, Class 6, in the Washington High Schools in the District of Columbia, on September 1st, 1907, at a salary of \$1000 per annum, and that she rendered services as such probationary teacher during the school year of 1907-8; said appointment was in the following language:—

“J. T. Martin appointed teacher in the High Schools and assigned to Class 6. Miss Martin reported for duty on September 30th.”

2. That she was duly appointed as a permanent teacher in Group A, Class 6, in the summer of 1908, to take effect on September 1, 1908, at a salary of \$1000 per annum, and that she duly qualified under said appointment by taking the oath of office on September 1st, 1908; said appointment is as follows:—

“Appoint J. T. Martin probationary teacher as permanent teacher and transfer from the Business High School to the Central High School, to take effect on and after September 1, 1908.”

3. That prior to her appointment as a probationary teacher, the plaintiff had had 9 years' experience in teaching in accredited normal and high schools.

4. That ever since the passage of the act of Congress, approved June 20th, 1906, entitled “An Act to fix and regulate the salaries of teachers, school officers and other employes of the Board of Education of the District of Columbia,” as that Act has been construed by the Comptroller of the Treasury and carried into effect by the Board of Education of this District, teachers in Group A, Class 6, serving their first year under probationary appointments have been

held not to be teachers within the meaning of section 10 of said Act, and when continued in service after the expiration of such probationary year they have been required to receive a new appointment and take an oath of office. During the same period teachers serving under an ordinary and not a probationary appointment have been held to be entitled to the benefit of the provisions of said section 10, and when continued in the service have not received new appointments, nor been required to take the oath of office.

5. During the same period, carrying out the Act as construed by said Comptroller of the Treasury, a teacher in Group A, Class 6, having served one year under a probationary appointment, when continued in service under appointment as a regular teacher has received only \$1000 a year for the first year's services under such regular appointment—this on the ground that the clause of section 6 of said Act of Congress, which provides that every new teacher "shall receive for the first year the minimum pay of said class or group" refers to the first year under a regular appointment, and that the services for one year under a probationary appointment, is not to be reckoned as service as a teacher.

6. That after her said last mentioned appointment and qualification for office on September 1st, 1908, the plaintiff has continued to render services as a teacher in Group A, Class 6, until the present time.

7. Under said Act of Congress the yearly salaries of teachers in the schools of the District of Columbia are paid in ten monthly instalments, no payments being made for the months of July and August. For the months from September, 1908, to April, 1909, inclusive, the plaintiff has claimed to be entitled to compensation at the rate of \$1800 per annum, that is, she claims to be entitled to receive \$180. for each of the ten months for which salaries are paid, but she has received only \$100 for each of said months.

A. S. WORTHINGTON,
Attorney for Plaintiff.
E. H. THOMAS,
Attorney for Defendant.

May 28, 1909.

10 Supreme Court of the District of Columbia.

FRIDAY, May 28, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

At Law. No. 51659.

JENNIE T. MARTIN, Pl'tf.,
vs.
DISTRICT OF COLUMBIA, Def't.

And now comes here the plaintiff by her Attorney Mr. A. S. Worthington and the defendant by its Attorney Mr. E. H. Thomas and submit this case to the Court upon an agreed statement of facts, and the same having been heard, the Court finds the issue joined in favor of the plaintiff.

Therefore it is considered that the plaintiff recover against the defendant Six hundred and forty dollars (\$640), with interest thereon from the 1st day of May, 1909, being the money payable

by the defendant to the plaintiff, by reason of the premises, together with the costs of suit, to be taxed by the Clerk, and have execution thereof.

The defendant notes an appeal to the Court of Appeals of the District of Columbia, from the judgment herein.

11 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 10, both inclusive, to be a true and correct transcript of the record according to Rule Five (5) of the Court of Appeals of the District of Columbia, in cause No. 51,659 at Law, wherein Jennie T. Martin is Plaintiff and The District of Columbia is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 28th day of May A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2031. The District of Columbia, appellant, *vs.* Jennie T. Martin. Court of Appeals, District of Columbia. Filed May 28, 1909. Henry W. Hodges, clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED

MAY 29 1919

Henry W. Hodgson.
Clare.

IN THE

Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

v.

JENNIE T. MARTIN.

BRIEF ON BEHALF OF APPELLANT.

EDWARD H. THOMAS,

FRANCIS H. STEPHENS,

Attorneys for Appellant.

Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

v.

JENNIE T. MARTIN.

BRIEF ON BEHALF OF THE APPELLANT.

Statement of Facts.

This is an appeal from a judgment rendered for the plaintiff in the Supreme Court of the District of Columbia in an action of assumpsit for money alleged to be due her for services as a teacher in the public schools.

The case was tried upon an agreed statement of facts, which shows that the plaintiff below, the defendant here, was appointed as a teacher in the high schools of this city on September 1, 1907, at a salary of \$1,000 per annum. This appointment was probationary under the law and was for one year. In the summer of 1908 she was given a permanent appointment in the high schools, at the same salary, to take effect on the 1st of September, 1908. She has remained a

U.S. No 2031, 157 U.S. 362

teacher in the schools and performed the services required of her since the date of her first appointment. Prior to her appointment as a probationary teacher she had had nine years' experience in teaching in accredited normal and high schools outside of the District of Columbia. The Comptroller of the Treasury has ruled that probationary teachers were not included within the terms of section 10 of the act of June 20, 1906 (34 Stat., 316).

"When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection."

And when continued in service after the expiration of the probationary year they have been required to receive a new appointment and take an oath of office. The Comptroller has also ruled that a teacher receiving a permanent appointment after the expiration of a probationary year was entitled only to the same amount of salary for the first year as that received during the probationary year, under the terms of the said act.

In the act of May 26, 1908, to provide for the expenses of the government of the District of Columbia (35 Stat., 289) this provision occurs:

"That teachers *hereafter employed* in normal, high and manual training schools, may be placed in Group A, class 6, and receive their longevity increase according to their number of years of experience in teaching in accredited normal, high or manual training schools."

As the defendant in error had taught nine years in an accredited high school before her appointment in the District, she claimed that the salary allotted her for the past year should have been the maximum salary of her group and class, \$1,800, and not the minimum salary of that group and class, \$1,000. The amount of the judgment awarded her, \$640, was the difference between these two

salaries, computed through the month of April, 1908, payable in ten installments.

From the judgment so rendered the District of Columbia appealed in open court.

Assignments of Error.

1. The court below erred in rendering judgment for the plaintiff.

2. The court below erred in not rendering judgment for the defendant upon the agreed statement of facts.

3. The court erred in holding that the plaintiff below was "hereafter employed" within the meaning of the act of 1908.

4. The court erred in holding that the plaintiff below was entitled to be paid at the rate of \$1,800 per annum for her services as a teacher.

ARGUMENT.

Under the terms of the act of 1906, section 6, every new teacher at the time of his appointment shall be assigned to a class or group by the Board of Education on the recommendation of the Superintendent of Schools, and shall receive for the first year the *minimum pay of said class or group*. This was the provision that was changed by the amendment of 1908. The question then arises, Did this amendment intend to include teachers who came into the service after the passage of the amendment, or did it intend to include those who were already in the service as well as those who might come in after that time? The Comptroller of the Treasury ruled that it applied only to those who came

into the service after the time of the passage of the amendment, and the court below ruled that it included those teachers who were already in the service at the time of the amendment.

The solution of the question depends upon the meaning of the phrase "hereafter employed."

The use of the word "employed" is not felicitous, and if the word stood alone, there might be some doubt about the meaning of the phrase; but in conjunction with the word "hereafter," it is submitted the question is relieved of any difficulty.

Employed means:

"to use; to have in service; to cause to be engaged in doing something.

"(a) to make use of, as an instrument; a means, a material, &c., for a specific purpose; to apply * * *

"(c) to have or to keep at work; to give employment or occupation to; to entrust with some duty or behest."

Webster's International Dictionary.

"Employed, as applied to persons, engaged or about to be engaged; engaged or occupied in the performance of work or duties; hired to perform labor; a term which means not only the act of doing a thing, but also to be engaged to do it; to be under contract or orders to do it; either busy or occupied at work, or commissioned or entrusted with the management of an affair."

15 Cyc., 1030-1.

The most appropriate of these definitions seems to be that of "hired to perform labor," or "to give employment or occupation to." If these equivalents were substituted for the word "employed" in the amendment, so that it should read "hereafter hired to teach," or "hereafter given employment or occupation as teachers," there would be no ambiguity at all.

"Laborers employed" means those hired by a contractor.

working at his request, under an agreement on his part to compensate them for their services.

McCluskey v. Cromwell, 11 N. Y. (1 Kern.), 593, 599.

There may also be employment in the absence of any contract to pay for services.

Reg. v. Foulkes, L. R., 2 C. C., 150, 152.

Employment may mean either busy or occupied at work, or it may mean entrusted with the management of an affair.

Brugier v. Moussier's Adm., 5 La., 93, 95.

Laws to be published in newspapers "employed" by a municipal corporation means in papers selected or designated.

In re Astor, 50 N. Y., 363, 368.

"To be employed in anything means not only the act of doing, but also to be engaged to do it; to be under contract or orders to do it."

U. S. v. Catherine, 25 Fed. Cas., 332, 338.

Ritchie v. People, 40 N. E., 454, 455, 456.

"To be employed in anything means not only the act of doing it, but also to be engaged to do it; to be under control or orders to do it. And this is not only the ordinary meaning of the word, but it has been frequently used in that sense in other acts of Congress."

United States v. Morris, 14 Pet., 464, 475.

If the definition of the Supreme Court be substituted for the word "employed" in the amendment, there will be no doubt about the meaning of the phrase "hereafter employed." If the statute read:

"hereafter engaged to teach," or
hereafter under contract or orders to teach,"

it would not apply to teachers already in the service, or to the defendant in error, because these people were already in

the service, and were not to be "hereafter" engaged or contracted with.

There cannot be, and there is not, any dispute as to the meaning of the word "hereafter." It means, plainly, after the time of the passage of the amendment. It is used in contradistinction to the word "now" or the word "heretofore." "Teachers hereafter employed" is not the same as "teachers now employed" or as "teachers heretofore employed." If Congress had intended the amendment to reach teachers already in the service, would it not have expressed its intention by some such plain language? It does not require any ingenuity to frame such an expression. Any number of them occur instantly to the mind:—"all teachers now or hereafter employed"; "all teachers employed"; "all teachers in the service," &c. But Congress used none of these, but said: "teachers *hereafter* employed." How can it be said that a word plainly futurity in its meaning includes something in the past; that it means exactly the opposite?

It is submitted that the teachers who were already in the service, who had been employed prior to the passage of the amendment, including the defendant in error, were not "hereafter employed," within the meaning of that amendment, and that the judgment, therefore, should be reversed.

EDWARD H. THOMAS,

FRANCIS H. STEPHENS,

Attorneys for Plaintiff in Error.

COURT OF APPEALS,
DISTRICT OF COLUMBIA,
FILED

JUN 1 - 1914

Henry W. Hodgson

Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

v.

JENNIE T. MARTIN.

ADDENDUM TO APPELLANT'S BRIEF.

The history of this proviso throws considerable light upon the intention of Congress.

The amendment as first presented to Congress, and as passed by both Houses, contained the word "hereafter" preceding "teachers"—

"That hereafter teachers employed in normal, high and manual training schools, may be placed in Group A, class 6, and receive their longevity increase," &c.

Here the word "hereafter" refers to the verb "may be placed," not to the verb "employed," upon which there is no limitation except as to schools; none as to time. It plainly included all teachers in those schools, whether then or thereafter employed.

But by a concurrent resolution adopted May 22, 1908 (Congressional Record, p. 6779), the position of the word "thereafter" was altered so as to follow "teachers." We quote the passage:

"CORRECTION IN ENROLLMENT.

"Mr. BURLESON: Mr. Speaker, I send to the clerk's desk a concurrent resolution, and ask unanimous consent that it be adopted.

"The SPEAKER: The gentleman from Texas (Mr. Burleson) asks unanimous consent for the adoption of the following concurrent resolution, which the clerk will read.

"The clerk read as follows:

"Resolved by the House of Representatives (the Senate concurring), That the clerk be authorized in enrolling the District of Columbia appropriation bill to transpose the word "thereafter" in the second proviso in the matter inserted by the conference report in connection with Senate amendment No. 141, so as to follow and not precede the word 'teachers.'

"The SPEAKER: Is there objection?

"There was no objection.

"So the concurrent resolution was agreed to."

The amendment, therefore, reads, "teachers hereafter employed;" "hereafter" obviously referred to "employed."

This action of Congress in thus changing the position of "hereafter" indicates very clearly the object to be accomplished. In its first position it means that "hereafter teachers may be placed." In its second position it means "teachers hereafter employed may be placed."

It is submitted that no amplification of this argument is necessary in the light of the concurrent resolution.

It is a matter of considerable significance, also, that Congress has neglected to appropriate money to carry into effect any interpretation placing the old teachers on the basis of their experience. They are already provided for in the act of 1906 and received the annual increase automatically. The

amount required to place them, as contended for, is estimated at from \$100,000 to \$150,000. This amount of money should not be taken from the Treasury, nor should the system be disturbed by a mere rule of interpretation.

EDWARD H. THOMAS,

FRANCIS H. STEPHENS,

Attorneys for Appellant.

DISTRICT FILED
JUN 1 - 1919
Henry W. Rodgers.
C. L. L. L.

IN THE
Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

vs.

JENNIE T. MARTIN, APPELLEE.

BRIEF FOR APPELLEE.

A. S. WORTHINGTON,
Attorney for Appellee.

IN THE
Court of Appeals, District of Columbia.

APRIL TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

vs.

JENNIE T. MARTIN, APPELLEE.

BRIEF FOR APPELLEE.

From the agreed statement of facts in the record it will be seen that the appellee was appointed a probationary teacher in September, 1907; that she served in that capacity during the school year of 1907-1908, and that she received a permanent appointment in September, 1908, under which she has served ever since. The court below held that the phrase in the act of Congress of May 26, 1908, "Teachers hereafter employed," etc., applies to all teachers in group A, class 6, whether they were appointed before or after the passage of that act. If this court shall agree in that conclusion, it will not be necessary to consider any other question. But if this court shall hold that in the phrase in question the word "employed" means *appointed*, then the further question will arise whether the appellee was not *appointed* a teacher

in Group A, class 6, after the passage of the act of May 26, 1908.

These two questions will be considered in their order.

I.

It is submitted that according to all the dictionaries and by common usage, of which the court takes notice, the verb "to employ" refers ordinarily to a continuous service, rather than to the single act of authorizing or requesting the performance of service. Thus the Century dictionary gives as the principal meaning of this word: "To give occupation to; make use of the time, attention, or labor of; keep busy or at work; use as an agent."

A Massachusetts statute provided that "no vessel regularly employed in the coasting trade" should be obliged to pay compulsory pilotage into or out of any port in that State. It was said in that case that "the word 'employed,' although answered by any present occupation, *is more commonly used as signifying continuous occupation*, and although a single act of trading answers the phrase 'employed in trade,' yet this phrase also ordinarily imports continuous business" (*Wilson v. Gray*, 127 Mass., 98).

In the court below counsel for the appellant, however, argued that the use of the word "hereafter" in connection with the word "employed" indicates an intention on the part of Congress to give the latter word in this particular phrase the same meaning as though the phrase had been *hereafter appointed*. It is submitted that there is no force in this suggestion. The natural inference from the use of the word "hereafter" in this connection would be that Congress was guarding against any inference that it might be intended to give the increased pay for past services.

To illustrate this point, take the case of *U. S. v. Morris*, 14 Pet., 464. In that case a statute was under consideration which punished any person who should serve on board any vessel of the United States "employed or made use of in

the transportation or carrying of slaves from one foreign country or place to another." If that statute had read "hereafter employed" in the transportation or carrying of slaves, it is not likely that counsel could have been found bold enough to suggest to any court that the act did not apply to a case in which the vessel had started on its voyage before the passage of the act.

The organic act of our present school system, which was approved June 20, 1906, and which, of course, is to be read with that portion of the District Appropriation Act of May 26, 1908, which refers to the same subject—the two acts being considered as one—shows clearly enough that Congress appreciated the distinction between a future appointment and continued employment. Section 6 of that act provides as follows:

"No person without a degree from an accredited college or a graduation certificate from an accredited normal school * * * shall *hereafter be appointed* to teach any academic or scientific subjects in the normal, high, or manual training schools."

But suppose, for the sake of argument, that the phrase "hereafter employed," as used in the clause under consideration, is susceptible of two constructions, one synonymous with "hereafter appointed" and one synonymous with "hereafter in service." In that case the court is to look at the reasonableness of the two possible constructions as one method of determining in which of the two senses the phrase was used. The construction contended for on behalf of the appellant, if adopted by the court, puts at a great disadvantage the present experienced and faithful teachers in the high schools of Washington, as compared with future new appointees. It gives preferment to the stranger whose qualifications can be known only by hearsay over the equally competent person whose qualifications are known from personal observation by the school authorities. It would seem to be much more reasonable to give the benefit of its provisions to

those who have been tried and are known to be competent, and require those newly appointed to show their fitness before getting the increased pay. If, as said by the court below, a discrimination against newly appointed teachers were indicated, the court would readily enforce it, because for that discrimination a good reason is obvious.

It is understood by counsel for the appellee that counsel for the District in the argument in this court will refer to, and rely upon, a certain concurrent resolution which authorized the clerk in enrolling the bill to transpose the word "hereafter" so that it would follow and not precede the word "teachers." This resolution was adopted by the two Houses of Congress on the 23d of May, 1908, three days before the approval by the President of the Appropriation Bill in question. As nothing on this subject appears in the brief of counsel for the appellant, counsel for the appellee are unable to determine what effect it is sought to give to the fact that this concurrent resolution was passed. There is nothing in the Congressional Record in reference to it except the mere statement of its passage.

At the outset the court is reminded that the Supreme Court has repeatedly held that the views of individual members of Congress, even though stated in debate in Congress, are not to be considered by the courts in construing acts of Congress (*Aldrich v. Williams*, 3 How., 9; *Maxwell v. Dow*, 176 U. S., 581-601; *U. S. v. Freight Association*, 166 U. S., 290-318).

Even when the Chairman of the House Committee on the Revision of the Laws stated to the House when the revision was on its passage that no change in existing laws was intended, the Supreme Court held that if a change was apparent the court must enforce it (*Bale Refrigerating Co. v. Sultzberger*, 157 U. S., 42).

Aside from this, it is not seen how the phrase "teachers hereafter employed" differs in the slightest degree in its meaning from the phrase "hereafter teachers employed."

It is hard to suppose that if Congress intended to change the wording of this sentence so that the benefit conferred would apply only to teachers "hereafter appointed" it did not use the proper word to convey that idea.

But this discussion would seem to be foreclosed by a consideration of the Conference Report on this bill, which was filed May 12, 1908, and constitutes Report No. 1741, House of Representatives, 60th Congress, First Session. That report refers to the action of the Conference Committee on a number of amendments to the bill which had been made in the Senate, as to some of which the Conference Committee recommended concurrence, and as to the remainder of which it stated that the Senate had receded. The amendment with which we are here concerned is numbered 141, and as to it the Conference Committee reported as follows:

"AMENDMENT NUMBERED 141.

"That the House recede from its disagreement to the amendment of the Senate numbered 141, and agree to the same with an amendment as follows:

"In lieu of the matter inserted by said amendment insert the following:

"For teachers of the normal, high, and manual training schools promoted for superior work, Group B of class six, seven in all, at a minimum salary of one thousand nine hundred dollars each: *Provided*, That hereafter no teacher shall be eligible to Group B, class six, who has not attained the maximum of Group A: *And provided further*, That *hereafter teachers employed* in normal, high, and manual training schools may be placed in Group A, class six, and receive their longevity increase according to their number of years of experience in teaching in accredited normal, high, or manual training schools: *Provided further*, That hereafter no more than seven teachers shall be promoted in any one year from Group A, class six, to Group B, class six.

"And the Senate agree to the same."

* * * * *

Accompanying this report in the House was a "Statement of Managers on Part of the House," from which the following extract is taken:

"On amendments numbered 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, and 162 relating to the teachers of public schools, provides for twelve heads of departments at \$1,900 each, as proposed by the Senate, and for seven instead of fourteen teachers at \$1,900 each of normal, high, and manual training schools; reduces the amount for longevity pay from \$165,000 as proposed by the House to \$146,900 as proposed by the Senate; increases the amount of allowance to principals from \$31,680 as proposed by the House to \$32,680 as proposed by the Senate, and inserts a provision that no teacher shall be eligible to Group B, class 6, who has not attained the maximum of Group A, AND THAT TEACHERS EMPLOYED in normal, high, and manual training schools may be placed in Group A, class 6, and receive longevity increase according to their number of years of experience, and that no more than seven teachers shall be promoted in any year from Group A, class 6, to Group B, class 6."

It will be seen that the House conferees in stating the effect of this amendment left out the word "hereafter" altogether, thereby giving to the phrase exactly the same meaning as though it had read: "Teachers employed in normal, high, and manual training schools may be placed in Group A, class 6, and receive longevity increase," &c., so that whether the bill as agreed upon by the Conference Committee read "hereafter teachers employed" or "teachers employed hereafter," it meant *employed* as distinguished from *appointed*.

II.

But if, notwithstanding the foregoing, the court shall be of the opinion that the phrase "hereafter employed" is to be construed as meaning *hereafter appointed*, still the judgment below should be affirmed.

The organic act of 1906 provides:

"The first year in Group A, class 6, shall be probationary."

The agreed statement of facts shows that in the carrying of this law into effect it has been held, as a reading of the

law indicates it was intended it should be held, (1) that one who is serving under such a probationary appointment is not entitled to the benefits of section 10 of that act, which gives a right to a hearing before dismissal, and (2) that when the probationary year has expired, if the authorities intend to continue the person in the service a new appointment is required, which becomes effective only when the oath of office is taken.

In the rules adopted by the Board of Education under the general powers conferred upon it by the act of June 20, 1906, there is the following rule:

"OATHS OF OFFICE.

"Under an order of the Commissioners of the District of Columbia, dated June 24, 1903, it is provided—

"That each officer and employee of the District of Columbia above the grade of day laborer, who has not taken, subscribed and filed an oath of office as required by the order of December 2, 1897, under his most recent appointment, shall immediately do so; and hereafter heads of offices in said District will be held responsible that no such officer or employee, in their respective offices, shall be permitted to enter upon any duty until he, or she, has taken, subscribed and filed such oath. * * * No compensation will be paid to any officer or employee not having complied with this order."

"In compliance with the foregoing order it will be impossible to certify the pay of any employee until he has subscribed to the proper oath of office.

"All persons newly appointed must call at the office of the secretary of the Board of Education, either before or on the day of the commencement of their duties, and comply with the foregoing order."

After the probationary year no appointment of teachers is made and no oath is required, except as above stated. A regular appointment is for life, or till dismissal for cause after a trial. The person receiving such a probationary appointment may be dismissed without a hearing after a

single month's service, or even after a single day's service, because not deemed to be fit to serve as a teacher in the schools. He is, properly speaking, simply being tested to determine whether he shall be a teacher. But whatever his position may be called, it is clear from the language of the act of 1906, and from the rules adopted by the Board of Education pursuant to the authority given them by that act, that when the probationary term of appointment of the appellee in this case came to an end on the 30th day of June, 1908, she ceased to be a teacher in the public schools. If she was to be continued in the service a new appointment was absolutely necessary, and as she had given satisfaction and it was desired to continue her in the service, she was reappointed and qualified on the 1st day of September, 1908, by taking the oath of office. If, therefore, the phrase under consideration is to be read "hereafter appointed," she was *thereafter appointed*.

It needs only to be added that when it is said in the provision under consideration that these teachers "may be placed in Group A, class six, and receive their longevity increase," &c., the words "may be" refer to placing in Group A, class six, only, and not to "and receive their longevity increase." The increase necessarily follows the employment. But even if the "may be" were applicable to the latter part of the clause, the result would be the same. In such a connection "may" means *must* (Mason v. Fearson, 9 How., 248-258; Supervisors v. U. S., 4 Wall., 435-445). This, counsel are informed, is conceded by the Comptroller of the Treasury, and was expressly admitted by counsel for the appellant in the court below.

A. S. WORTHINGTON,
Attorney for Appellee.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED
DEC 8 1909

Henry W. Hodge
to file.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1909.

No. 2031.

DISTRICT OF COLUMBIA, APPELLANT,

vs.

JENNIE T. MARTIN, APPELLEE.

ADDITIONAL BRIEF FOR APPELLEE.

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ADDITIONAL BRIEF FOR APPELLEE.

Since the former brief for the appellee in this case was printed, Comptroller Tracewell has had before him a question as to the meaning of that clause of the act of May 26, 1908, the construction of which is involved in this case. In the case referred to two teachers in the High School in Washington were demoted—that is, each of them was retired from the position which he held and simultaneously reappointed to another position in the same class, but at a smaller salary. The question which the Comptroller was called upon to decide was whether thus being newly appointed they were “hereafter employed” within the meaning of the clause of the act of May 26, 1908, under consideration. The Comptroller held that they were entitled to the benefits of that clause. In his opinion he said:

"Even if the changes referred to be treated solely as a reduction and the teachers in question be relegated to the minimum salary in group A, class six, according to the views expressed in my decision of August 27, 1907, I think they must be considered as 'hereafter employed' and the act of May 26, 1908, *supra*, would give them the benefit of former service rendered before the passage of the organic act of June 20, 1906.

"The law of May 23, 1908, would seem to have for its purpose, in part at least, to mitigate the severity mentioned by me in the decision of 1907, and to have 'otherwise provided by law' for said mitigation.

"Messrs. Bailey and Jackson have both had more than ten years' experience in teaching in a Washington high school and if the Board of Education finds said school an accredited high school, they shall be entitled to the highest pay provided in class six, group A, which is \$1,800."

It is difficult to see how it can be seriously contended that in this case the Comptroller made an erroneous decision, and if his conclusion be correct it follows that teachers in class 6 who have their salaries reduced may, as in the two cases referred to they actually did, receive higher compensation after being reduced than would be received by other teachers in like position who had given satisfaction and retained their position.

Further, under the view which is maintained here by counsel for the appellant, any teacher in class 6 may resign and on the same day, without examination, receive a new appointment in the same class and of the same grade which he or she occupied before resigning, and such teacher would become entitled to the benefits of the clause in question.

In the original brief for the appellee it is urged that the construction of the words "hereafter employed" which is relied upon here by counsel for the appellant is unreason-

able because it would involve a discrimination against teachers having experience in the schools of the District of Columbia in favor of teachers whose experience had been wholly outside of the District. During the past summer at the suggestion of counsel for the appellee the school authorities of practically all the leading cities in the United States have been communicated with to learn whether such discrimination exists anywhere else. Of course, our statute must be held to mean what the court concludes Congress intended to mean, and the action taken by school authorities in other jurisdictions has no direct bearing upon the question now before this court in this case, but a very cursory examination of the printed statutes and regulations of the schools in other cities would show that when Congress passed the organic act of June 20, 1906, it intended to conform and did conform in the general lines of that statute to the regulations in force in nearly all of the principal cities of the United States. Indeed the Senate committee before which the organic act referred to was pending caused an investigation to be made regarding the schedule of salaries in the schools in one hundred of the principal cities in the United States, and the result of the investigation is contained in a document containing forty-three printed pages, which is known as Senate Document No. 94, First Session, 59th Congress. This report was presented to the Senate by Mr. Gallinger, the chairman of the District Committee, on December 19, 1905.

And it is to be remembered that not only was Congress in this way advised as to the school systems in the cities referred to, but members of the House of Representatives as well as of the Senate come from different sections of the Union and are presumed to have a general knowledge of the school systems in their respective jurisdictions, and to have known, therefore, that there has been gradually evolved in this country what might be called the American plan of "placing" school teachers as to their salaries according to their prior experience as teachers.

The result of the inquiries that have been made shows, what would be expected, that wherever discrimination in salaries between inside and outside teachers exists that discrimination is invariably in favor of those who have had experience in the schools of the city in which the appointment is made and the salary is fixed.

The following are samples of the regulations on this subject:

The by-laws of the Board of Examiners of the Department of Education in the city of New York, after providing what increase of salary shall be given under new appointments for previous experience, contains the following paragraphs:

“For laboratory assistants, junior teachers or assistant teachers, the years of high school experience remaining after the specified deductions have been made shall be rated as follows:

Outside experience.	Allowance.
1 or 2 years	1 year
2 or 4 “	2 years
5 or 6 “	3 “
7 or 8 “	4 “
9 or more years	5 “

In reply to a letter written to the Superintendent of the Boston public schools, his chief clerk, in a letter dated September 1, 1909, writes as follows:

“In reply to question 3, I will state that the high school experience in other cities of teachers who are appointed to positions in this city is seldom counted at all. It may be counted, however, upon the recommendation of the superintendent and vote of the school committee.”

In Pittsburg, in respect of the salaries of the teachers in high schools, the regulations in force provide that:

“The experience in no other secondary school will count in the above schedule except where the appli-

cant has had at least twenty months' experience in another secondary school, in which event this experience may permit the instructor's salary to begin with that of the second year."

In the rules and regulations of the city of Toledo, Ohio, is found this paragraph:

"RULE 4. In fixing the number of years' credit to be given teachers for experience in graded schools outside of Toledo, two years of experience in such schools shall be counted as one year's experience in the Toledo schools. No credit will be given for experience in ungraded schools."

The printed salary schedule of Cleveland public schools for 1904-5, contains the following paragraph:

"Teachers who have had experience in other graded schools than the city of Cleveland may be appointed and receive the same salaries as though their services had been in Cleveland schools whenever the superintendent of instruction shall deem it for the best interests of the schools."

The schedule of high-school salaries annexed to the annual report for 1904 of the Board of Education of Grand Rapids, Michigan, contains the following sections:

"In fixing the number of years' credit to be given newly appointed teachers for experience in other than Grand Rapids schools the committee on schools and teachers shall allow such credit as the facts, in its judgment, warrant; but in no case shall a teacher be given credit for more than his or her full number of years' work in public graded schools having not less than three rooms, nor with more than half time for work in other public schools.

"Teachers of experience elsewhere accepting cadetships here may, if promoted within a year to the charge of a room, be given such credit for experience as the committee on schools and teachers may deem just, subject to the restriction contained in rule 29."

The Superintendent of the Minneapolis, Minnesota, schools, in a letter dated September 18, 1909, says:

“Our schedule does not apply to outside experience and we make a special arrangement with each teacher new to our force.”

The Superintendent of the Board of School Inspectors of St. Paul, Minnesota, under date of September 10, 1909, writes as follows:

“Teachers that are brought in and new to the city from other cities are given credit for their experience elsewhere, although there is a tacit working principle that we do not appoint any one in our high schools new to the city at more than twelve hundred dollars per annum.”

The superintendent of the schools of Cleveland, Ohio, under date of August 27, 1909, encloses a printed clipping from the proceedings of the Board of Education of that city, which contains the following paragraph:

“Teachers who have had experience in other grade schools than those of the city of Cleveland may be appointed and receive the same salary as though their services had been in the Cleveland schools, when in the judgment of the superintendent of schools it shall seem for the best interests of the schools.”

The printed salary schedule of the Board of Education of San Francisco, California, for 1908-9, contains the following clause:

“Experience shall be reckoned from date of assignment to the different positions in the San Francisco school department, but the salary of a promoted teacher shall in no case be less than that attaching to the position from which he or she may have been promoted. Experience acquired elsewhere shall not, so far as salaries are concerned, be considered.”

In the printed rules and regulations appended to the annual report for 1903-4 of the Board of Education of the city of Los Angeles, California, it is provided in section 98 that teachers who have had less than two years' experience shall receive the minimum salary of their department.

In section 99 it is provided that high school teachers shall receive five dollars per month for each additional years' experience until they have served four years. Then comes sections 100 and 101, reading as follows:

"100. The experience in teaching outside of Los Angeles shall be considered one-half to be determined by years of not less than eight months each. Additional time in any one year shall not be counted."

"101. When part of the school year is taught outside and part inside of the city if the total amount to eight months it shall be counted as half a year. Parts of years taught outside the city shall not be counted, except in cases of half of the full year period."

In the original brief much reliance is placed upon the report made to the House of Representatives by the House members of the joint committee of conference which acted upon the disagreeing votes of the two Houses as to the act, the construction of which is involved in this suit. As it may be urged that the court is not at liberty to look at that report attention is called to the case of *Ocean Navigation Company vs. Stranahan*, 214 U. S., 320-333. In that case the court said:

"While we have said that the conclusions just stated are clearly sustained by the text, yet, if ambiguity be conceded, it is dispelled, and the same result is reached by a consideration of the report of the Senate Committee on Immigration, where the provisions originated, and which we have a right to consider as a guide to its true interpretation."

How much stronger is this case where the report referred to does not state merely the conclusions of a committee of one

of the two Houses of Congress, but formally presents to one House the conclusion reached by the joint committee of both Houses.

It is not seen how the amount of money that will be required to pay these teachers the difference between their salaries as fixed by the comptroller and as fixed by the statute under which the comptroller acts has anything to do with the merits of the question before this court, but counsel are advised that the amount involved as stated in the brief on behalf of the appellant is entirely too great.

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